IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

JOSEPH C. "BUTCH" THOMPSON, Petitioner,	
v.	Civil Action File No. 05-1-4594-34
KATHLEEN R. JOHNSTONE, LAURA F. SEARCY, JOHNNY M. JOHNSON, TERESA PLENGE, PH.D., CURTIS L. JOHNSTON, JR. in their official capacity as Members of the Cobb County School Board, and JOSEPH J. REDDEN, in his capacity as Superintendent of Cobb County School District, and COBB COUNTY SCHOOL DISTRICT, Respondents.	

ORDER OF MANDAMUS AND INJUNCTION

The Petition for Mandamus Absolute and Permanent Injunction having come before this Court, and the entire record and briefs having been reviewed, IT IS HEREBY FOUND, ORDERED AND ADJUDGED as follows:

FINDINGS OF FACT

1. Petitioner brings this action against members of the Cobb County School Board, the Board, and its superintendent seeking mandamus

absolute, permanent injunction, and attorney fees[1] regarding Respondents' use of proceeds from a special purpose local option sales tax for educational purposes.

2. On May 7, 2003, the Cobb County School Board adopted a resolution calling for a referendum on a special purpose local option sales tax, now known as SPLOST II, the second installment of a SPLOST by the Cobb County School District. Cobb County voters approved imposition of SPLOST II in a public referendum held September 16, 2003.

3. To promote public approval of the referendum authorizing SPLOST II, Respondents promised Cobb County voters several "Curriculum/Technology Initiatives." These included the following:

Refresh Obsolete Workstations	$32,263,200.00
Refresh District Printers	$6,976,000.00
Refresh District Servers	$1,750,000.00
Refresh Existing District Network	$5,000.000.00
Computing Device for Every Teacher	$11,250,000.00
Data Center Equipment Refresh	$3,000,000.00
Refresh and Enhance Mobile Computing Access District Wide	$1,960,000.00
Copier/Duplicator Refresh	$13,559,327.00
Total	$75,758,527

[1] By stipulation of the parties, the issue of attorney fees was reserved for a later hearing.

(SPLOST II Notebook, Joint Ex. 1, Tab H, Tab also labeled "Curriculum and Technology," page 1).

4. SPLOST II specifically incorporates an initiative to "provide a computing device for every teacher." (SPLOST II Notebook, Joint Ex. 1, Tab H). By contrast, SPLOST II omits any comparable initiative to provide a computer, or computing device, for every student.

5. SPLOST II promises an initiative to "Refresh Obsolete Workstations." Through SPLOST II, Respondents promised Cobb County voters that this $32 million was the "estimated cost for 30,563 units [which] includes installation, 3-year warranty, productivity software, connectivity to network, & enhanced server support as appropriate at time of implementation." (SPLOST II Notebook, Joint Ex. 1, Tab H, p. 2). The explanation of the initiative to "refresh obsolete workstations" presently is posted on Respondents' website for members of the public to view. See http://www.cobbk12.org/communications/splost/curriculum.htm. These explanations of the initiatives appeared in identical form as part of the "Facility Group Report," also referred to as the "SPLOST II Facility Plan." The Facility Group Report, also referred to as the SPLOST II Facility Plan, was explicitly approved and adopted by the Respondent

School Board on March 27, 2003. (Respondents' Ex. 1; Ex. A to Petition for Mandamus). Respondents promised that "this initiative would affect students and staff in all academic areas." (SPLOST II Notebook, Joint Ex. 1, Tab H, p. 2). The referendum ballot, itself, promised that SPLOST II's technology initiatives would reach "all schools." (Joint Ex. 4).

6. To win public support for SPLOST II, and in advance of the referendum in September of 2003, Respondents printed and distributed single-fold pamphlets for each high school and its respective feeder schools. Respondents entitled the pamphlets "SPLOST II: Planned improvements for individual schools." In these pamphlets, Respondents promised each and every school in Cobb County (high, middle, and elementary) that obsolete workstations, printers, servers, networks, mobile computing access (for trailer classrooms), and copiers/duplicators would be "refreshed." (Pamphlets, Petitioner's Ex. I, Joint Ex. 5).

7. After obtaining public approval of SPLOST II in 2003, however, Respondents decided essentially to abandon the technology initiatives that were specified and promised by SPLOST II. Instead, Respondents planned to "re-budget" and reevaluate SPLOST II in order to fund a "one-to-one laptop" initiative where post-elementary students would be assigned laptop computers. Beginning in spring of 2004, Respondents

began promoting a costly "one-to-one" laptop initiative, known as "Power to Learn." Rather than refreshing obsolete computers in every school, the new Power to Learn Laptop Initiative would divert funds from SPLOST II's technology initiatives to purchase 56,000 laptop computers for every student at middle and high schools. (See Power to Learn Brochure, Petitioner's Ex. A ("Power to Learn is made possible through the Special Purpose Local Option Sales Tax (SPLOST), approved by Cobb County voters in 2003."); ("[T]here is about $59 million available under the technology portion of SPLOST to pay for Power to Learn.") Id.). The Power to Learn Laptop Initiative is so expensive that no funding from SPLOST II would remain to refresh obsolete computers at elementary schools.

8. To fully implement the Power to Learn Laptop Initiative, Respondents must "re-budget" almost the entirety of the Technology Funding for SPLOST II. (Power to Learn Cost Analysis, Ex. F.) Rather than refresh or replace the 30,000 obsolete workstations at every school for $32 million, full implementation of the Power to Learn Laptop Initiative means purchasing approximately 56,000 new laptop computers and directing them exclusively to middle and high school students. The estimated cost of providing 56,000 laptops to every post-elementary

student in Cobb County reaches $59,199,200. (Power to Learn Cost Analysis, Ex. F, p.2).

9. Fully implementing Power to Learn using "Budgeted SPLOST II Technology Funding" means that the "Administration would need to re-budget the SPLOST II Technology budget." (Id.). This was not what the voters were told before the SPLOST vote.

CONCLUSIONS OF LAW

10. The Georgia Constitution provides that "except as otherwise provided in this Paragraph," SPLOSTs for educational purposes "shall correspond to and be levied in the same manner as the tax provided for by Article 3 of Chapter 8 of the Official Code of Georgia Annotated, relating to the special county 1 percent sales and use tax." Ga. Const. of 1983, Art. VIII, Sec. VI, Para. IV (a). Thus, the Georgia Constitution takes pre-existing rules governing county SPLOSTs and explicitly incorporates and adopts them for educational SPLOSTs. These parallel laws warrant the Court's consideration *in pari materia.*

11. Georgia law imposes upon Respondents a legal duty to use SPLOST proceeds exclusively for the purposes specified:

> The proceeds received from the tax authorized by this part shall be used by the [school district] receiving proceeds of the sales and use tax exclusively for the purpose or purposes

> specified in the resolution or ordinance calling for imposition of the tax.

O.C.G.A. § 48-8-121(a)(1). Therefore, the obligation to specify purposes and then use SPLOST proceeds exclusively for the specified purposes, expressed in statutes like O.C.G.A. §§ 48-8-111 and 48-8-121, apply directly to educational SPLOSTs.

12. Respondents must describe the specific capital outlay projects to be funded. Ga. Const. of 1983, Art. VIII, Sec. VI, Par. IV(c). Essentially, Georgia law requires Respondents to give "fair notice" to the voters in the school district of the specific uses for which SPLOST proceeds will be used in the district if the SPLOST is approved in the referendum.

13. Respondents published and distributed extensive documentation and literature to promote public approval of SPLOST II. It is undisputed that Respondents distributed this material in order to win public approval of SPLOST II, including its technology initiatives.

14. This Court finds that Respondents are "bound" by such documentary materials in choosing how to spend the $75.8 million allocated under SPLOST II for technology initiatives. In a situation where a SPLOST referendum describes its specific projects rather vaguely, Respondents' own contemporaneously-published documents can be relied upon to explain or inform what was contemplated and put

forth to the public regarding the SPLOST's special purposes. *Dickey v. Storey*, 262 Ga. 452 at 456 (1992).

15. In *Dickey*, the Supreme Court held that a government body could be bound by SPLOST budget and account reports published by the government body in order to provide public information and/or promote public approval of the SPLOST referendum:

> Construing these Code sections, we hold that the Board is not authorized to use proceeds from the SPLOST tax for a purpose entirely different from that contained in the SPLOST budget and account reports. We further hold that the Board is bound by the SPLOST budget and account reports to complete all projects listed therein unless circumstances arise which dictate that projects which initially seemed feasible are no longer so. In this regard the governing authority has discretion to make adjustments in the plans for these projects, but may not abandon the projects altogether.

Dickey v. Storey, 262 Ga. at 456. Under the rationale of *Dickey*, this Court is compelled to conclude that Respondents are bound not only by language in the referendum, but also by noncontradictory, documentary evidence, (published and distributed by Respondents themselves prior to the referendum), that explain SPLOST II's technology initiatives in greater detail. The Court finds that some of this evidence includes: (1) Respondents' descriptions of the technology initiatives (SPLOST II Notebook, Joint Ex. 1, Tab H); and (2) pamphlets Respondents published

and distributed to promote public approval of SPLOST II, detailing "planned improvements for individual schools" (Pamphlets, Ex. I, Joint Ex. 5).

16. Accordingly, the Court finds that because Respondents printed, published, and distributed pamphlets, reports, and other documents that logically tend to explain the nature and purpose of SPLOST II's technology initiatives in noncontradictory terms (perhaps more specifically than the language on a ballot referendum), it is proper to consider such documentary evidence, properly authenticated. This material corroborates the Court's conclusion that the public was not given fair notice of the Board's plan adopted after the election to provide the laptop computers challenged by this lawsuit.

17. However, even if the Court confined itself to the ballot language in the referendum for SPLOST II, the Court concludes that sufficient evidence exists to warrant the grant of mandamus absolute and a permanent injunction. The ballot language in the referendum on SPLOST II promises technology improvements for "all schools." (Joint Ex. 4). If fully implemented, the Power to Learn Initiative deprives elementary schools of funding from SPLOST II to "refresh obsolete workstations." Therefore, even considering the ballot language in

isolation, full implementation of Power to Learn necessarily breaches the promises made to all schools, not just to middle and high school students, thereby authorizing this Court to grant mandamus and injunctive relief in this case. Thorton v. Clarke County School District, 270 Ga. 633 (1999) does not require a different result as the Court there determined that "none of the school board's plans violates the referendum." Id. at 635. That is not true in this case.

18. This Court concludes that Respondents could only depart from the technology initiatives specified and promised by SPLOST II if circumstances arose which dictated that the technology initiatives which initially seemed feasible were no longer feasible. *Dickey*, 262 Ga. at 456.

19. This Court further concludes that because it remains feasible to execute SPLOST II's technology initiatives as promised, Georgia law demands that Respondents complete the technology initiatives specified in SPLOST II.

20. There is no evidence that the projects originally designated to receive Technology Funding from SPLOST II are no longer feasible of performance.

21. Instead the evidence shows that "refreshing obsolete workstations" district-wide, as promised by SPLOST II, remains as feasible today as the

initiative was in September 2003, when Cobb County voters approved SPLOST II. Similarly, the other initiatives promised by SPLOST II—to refresh district printers, servers, and networks—also remain feasible.

22. A subsequent preference for a policy or technology initiative over one promised initially by this SPLOST referendum does not excuse Respondents' departure from the technology initiatives promised by SPLOST II and thus SPLOST II proceeds cannot be used for another purpose.

23. Because the original and promised technology initiatives remain feasible of completion, this Court concludes that Respondents are abusing their discretion when they depart substantially and materially from completing SPLOST II's technology initiatives as promised before the referendum was held for the SPLOST vote.

24. The technology initiatives promised by SPLOST II give no indication of a one-to-one laptop initiative for middle and high schools like Power to Learn. Although SPLOST II explicitly sets forth an initiative to provide a computing device for every teacher, Respondents described the technology initiatives for students as merely a "refresh" designed to prevent existing workstations from becoming obsolete.

25. Even Respondents' own published brochures note the difference between what was promised in SPLOST II and what Power to Learn contemplates:

> The rationale is that the multiple advantages provided by laptops—versus simply refreshing and expanding the existing computer labs—make this a more effective and efficient use of taxpayer dollars.

Power to Learn Brochure, Ex. A.

26. The comprehensive "re-budgeting" of SPLOST II's technology initiatives as contemplated by Respondents represents a course of action clearly prohibited by Georgia law.

27. Respondents have publicly declared their intent to use SPLOST II to fund Power to Learn:

> Power to Learn is made possible through the Special Purpose Local Option Sales Tax (SPLOST), approved by Cobb County voters in 2003. . . . [T]here is about $59 million available under the technology portion of SPLOST to pay for Power to Learn.

Power to Learn Brochure, Ex. A.

28. Respondents admit that they are "reevaluating" each and every one of the technology initiatives promised by SPLOST II.

29. Cobb County citizens have a reasonable expectation, established by Georgia law, that SPLOSTs proceeds are distributed for the sole

purposes promised by elected officials to win public approval of the SPLOST.

30. Respondents cannot abandon initiatives promised by SPLOST II. Respondents have a legal obligation to resist comprehensive, *post hoc* "re-budgeting" of SPLOST proceeds.

31. This Court's decision does not reach or decide the wisdom of the Power to Learn Laptop Initiative as a matter of educational policy. Further, this Court's decision is not intended to preclude Respondents from funding such a program with funds drawn from the School District's general budget. The Court does not hold that a one-to-one laptop initiative like Power to Learn could not be funded with SPLOST proceeds, if Respondents had properly included such an initiative as part of a SPLOST referendum approved by the electorate. But it is the decision of the Court that funds from SPLOST II's technology initiatives cannot be used for the one-to-one laptop initiative like Power to Learn Laptop because fair notice of such use was not given to the public when the referendum for SPLOST II was held.

32. For the foregoing reasons, the Court hereby ENTERS an order of MANDAMUS ABSOLUTE against Respondents to perform their clear public duty of devoting the proceeds of SPLOST II exclusively to the

technology initiatives specified in the September 16, 2003 referendum on SPLOST II and described in the documents contained in Joint Exhibit 1, the "SPLOST Notebook." The Court also ORDERS and ENTERS a PERMANENT INJUNCTION against Respondents to direct that SPLOST II's technology initiatives as set forth in Joint Exhibit 1 be accomplished as specified by SPLOST II. The Court FURTHER ENJOINS Respondents from using funds from SPLOST II's Technology Initiatives for any purpose other than that which is clearly set forth in SPLOST II's technology initiatives. This includes a one-to-one laptop initiative like Power to Learn Laptop Initiative, any pilot of the Power to Learn Laptop Initiative, or similar programs. Pursuant to stipulation by the parties, the issue of attorney fees will be heard by the Court on the 28th day of September, 2005, at 9 o'clock A.M. At that time all parties are ordered to appear in Courtroom "C" located on the 6th floor of the Superior Court Building.

SO ORDERED, this 29 day of July, 2005.

S. Lark Ingram

JUDGE S. LARK INGRAM
COBB SUPERIOR COURT
COBB JUDICIAL CIRCUIT

SUPREME COURT OF GEORGIA

Remittitur, Case No. S06A0400

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed: 05-1-4594-34

KATHLEEN R. JOHNSTONE et al. v. JOSEPH C. THOMPSON

This case came before this court upon an appeal from the Superior Court of Cobb County and it is considered and adjudged that the judgment is affirmed.

All the Justices concur, except Benham, J., who concurs in the judgment only. Sears, C. J., and Melton, J., who dissent.

Bill of Costs, $80.00

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta July 26, 2006

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk.